



Crl RC .No.1330 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

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Stanley

... Petitioner

Vs.

The State, Rep. by the Inspector of Police,
TIW West Police Station
Coimbatore
Cr.No.184 of 2010.

...Respondent

Prayer : Criminal Revision case is filed under Section 397 r/w 401 of Cr.PC to allow the present Criminal Revision case upon setting aside the judgment dated 30.12.2013 made in C.C.No.56 of 2011 on the file of Judicial Magistrate No.8, Coimbatore and modified by the lower appellate court by Judgment dated 02.07.2014 made in C.A.No.12 of 2014 on the file of the V Additional District & Sessions Judge, Coimbatore and set aside the same.

For Petitioner : Ms.S.Sridevi



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Legal aid counsel
For Respondent : Mr.V.J.Priyadharsana
Government Advocate
[Crl Side]

ORDER

This Criminal Revision case has been filed against the judgement and order passed by the V Additional District and Sessions Judge, Coimbatore in Crl.A.No.12 of 2014 dated 12.07.2014, partly allowing the appeal by modifying the sentence imposed by the learned Judicial Magistrate No.VIII, Coimbatore, made in C.C.No.56 of 2011 dated 30.12.2013, convicting the petitioner for offence under Section 279 of IPC and sentencing him to pay a fine of Rs.500/- and in default to undergo two weeks simple imprisonment and also convicting him under Section 304(A) of IPC and sentencing him to undergo one year simple imprisonment and to pay a fine of Rs.1000/- and in default to undergo one month simple imprisonment.



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2. The case of the prosecution is that the deceased Thirumalraj was crossing the road from South to North and the petitioner was driving a Eicher Mini Lorry from North to South and when the vehicle turned, it hit the deceased who was crossing the road and as a result, the deceased sustained head injuries.

3. The further case of the prosecution is that PW1 to PW3 had witnessed the incident and they immediately rushed to the spot and they found that the deceased had sustained grievous injuries and was lying unconscious. Immediately, the deceased was admitted at Abirami Hospital. The Private Hospital directed the deceased to be taken to the Government Hospital and the deceased was taken in an Ambulance to the Government Hospital. Unfortunately, the deceased succumbed to the injuries on the same day at about 3.30 p.m.



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4. The complaint (Ex.P1) was given by PW1 on 07.07.2010 at about 16.15 hours before the Sub-Inspector of Police, R.S.Puram, Coimbatore. On receipt of the complaint, an FIR was registered by PW8 in Crime No.184 of 2010 for offence under Section 279, 304(A) of IPC.

5. The investigation was taken up by PW8 and he went to the scene of occurrence and prepared the observation mahazar marked as Ex.P3 and the rough sketch marked as Ex.P6 in the presence of witnesses. The investigation officer thereafter went to the Government Hospital where the body of the deceased was kept in the mortuary and he conducted the inquest in the presence of the panchayatars and the inquest report prepared by him was marked as Ex.P7. The investigation officer thereafter took steps to



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send the body for post-mortem and the post-mortem was conducted by PW7. The post-mortem certificate was marked as Ex.P4 and the following antemortem injuries were noted in the post-mortem certificate.

On dissection of Scalp, Skull and Dura: Sub sealpal contusion 10 x8 cm noted on left temporo occipital region and 6 x 4 cm note on right occipital region. Crack fracture 12 cm in length noted on left temporo occipital bone. Diffuse sub dural and sub arachnoid hemorrhages noted on entire brain skull base fracture noted on left middle cranial fossa. Laceration 5 x 3 x 0.5 cm noted on the temporo occipital lobes of brain.

Other findings:-

-Pleural and Peritoneal cavities empty

-Hyoid bone Intact

-Heart Right side chambers contain about cc of fluid



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blood. Left side chambers empty. Coronaries patent.

-Stomach contains about 200 grams of partially digested cooked rice particles mixed with leaves, no specific smell, mucosa congested. Small intestine contains about 20 ml of bile stained fluid, no specific smell, mucosa congested.

-Lungs, Liver, spleen, Kidneys and Brain Cut section congested

-Urinary bladder empty.

6. PW7 gave a final opinion to the effect that the deceased appear to have died due to head injury.

7. The investigation officer arrested the petitioner on 08.07.2010 at about 19.00 hours and he was released on station bail. Thereafter, the investigation officer on completion of



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recording the statements of all the witnesses under Section 161(3) of Cr.PC and after collecting all the reports including that of the report of the Motor Vehicle Inspector marked as Ex.P2, completed the investigation and filed the final report on 19.12.2010 before the Trial Court.

8. The Trial Court issued summons to the petitioner and issued copies under Section 207 of Cr.PC. The Trial on being convinced with the materials placed before the Court framed charges against the petitioner for offence under Section 279 and 304 A of IPC. When these charges were put to the petitioner, he denied the same and pleaded not guilty.

9. The prosecution examined PW1 to PW8 and marked Ex.P1 To P8. The incriminating evidence that was collected during the course of trial was put to the accused person, when he was



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questioned under Section 313 (1) (b) of Cr.PC and he denied the same as false.

8. The Trial Court on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion that the prosecution has proved the case beyond reasonable doubts and accordingly convicted and sentenced the petitioner in the manner stated supra.

9. Aggrieved by the judgement and order passed by the Trial Court, the petitioner filed an appeal and the same was heard by the V Additional District and Sessions Judge in Crl.A.12 of 2014. The Appellate Court on re-appreciation of the evidence and after considering the findings of the Trial Court, came to a conclusion that there is no ground to interfere with the conviction of the petitioner under Section 279 and 304A of IPC. However insofar as



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the sentence is concerned, the Appellate Court modified the sentence insofar as the offence under Section 304A of IPC is concerned and reduced the period of imprisonment to six months simple imprisonment.

10. Aggrieved by the same, this Criminal Revision case has been filed before this Court.

11. When the Criminal Appeal came up for hearing on 23.03.2023, this Court had passed the following order :-

Pursuant to the earlier order passed by this Court on 07.03.2023, the non-bailable warrant was issued and Mr.J.Suresh, Special Sub Inspector, and Mr.A.Anandan, Special Sub Inspector, (Traffic Investigation Wing-West), Coimbatore have produced Mr.Stanley (petitioner) before this Court.



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2.This Court directed the production of the petitioner on the ground that the petitioner did not take any steps to engage any counsel and the petitioner was also enlarged on bail during the pendency of this criminal revision and the case was dragging on.

3.The petitioner stated that he does not have the financial wherewithal to engage a counsel and requested this Court to appoint a legal aid counsel to appear on behalf of the petitioner. The petitioner also undertook that he will be present on the date of hearing without fail. The petitioner further stated that he is now eking his livelihood as an auto driver at Coimbatore Railway Junction.

4.The non-bailable warrant issued by this Court is recalled. Ms.Sridevi.S. No.17, 1st Street, Vallalar Nagar, Thirumullaivoyal, Chennai 600 062 (Mobile



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No.9500139531), is appointed as the legal aid counsel to appear on behalf of the petitioner. Registry is directed to prepare a copy of the entire papers pertaining to this criminal revision and furnish the same to Ms.Sridevi.S., who has been appointed as the legal aid counsel to represent the petitioner.

*5.Post this case under the caption "for orders" on **06.04.2023**. The petitioner shall be present before the Court on **06.04.2023 at 10.30 am**.*

12. The matter was taken up for final hearing today and the petitioner was also present before this Court. This Court heard Ms.Sridevi, learned legal aid counsel, appointed by this Court and Mr.V.J.Priyadharsana, learned Government Advocate [Crl.Side] appearing on behalf of the State.



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13. The learned counsel for the petitioner submitted that PW1 to PW3 could not have witnessed this incident and there are discrepancies in their evidence. The learned counsel also pointed out to the rough sketch which was marked as Ex.P6 and submitted that the petitioner was driving the vehicle from north to south and when the vehicle was turning, the deceased without noticing the vehicle was crossing the road and as a result, was hit by the vehicle. The learned counsel submitted that this accident did not take place due to the rash and negligent driving on the part of the petitioner and hence, contended that the judgement and order passed by both the Courts below requires the interference of this Court. As an alternative submission, the learned counsel for the petitioner also submitted that the petitioner has already undergone incarceration for nearly 77 days and the family of the deceased has also received the compensation from the Motor Accident Claims



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Tribunal and hence, requested this Court to consider modifying the sentence to the period already undergone by the petitioner.

14. Per contra, the learned Government Advocate appearing on behalf of the State submitted that both the Courts below have appreciated the evidence of PW1 to PW3 and have come to a conclusion that the accident had taken place due to the rash and negligent driving of the petitioner. The learned Government Advocate submitted that the findings of both the Courts below does not suffer from any perversity and hence, there is no scope to interfere with the judgment in exercise of revisional jurisdiction. The learned Government Advocate further submitted that the Appellate Court had taken into consideration the facts and circumstances of the case and had modified the sentence insofar as the offence under Section 304A of IPC is concerned and the sentence imposed by the Trial Court does not require any further



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modification by this Court. Accordingly, the learned Government Advocate sought for the dismissal of this Criminal Revision Case.

15. This Court has carefully considered the submissions made on either side and also perused the materials available on record.

16. Both the Courts below have placed reliance upon the evidence of PW1 to PW3, who were examined on the side of the prosecution as eye-witnesses. All the three eye witnesses have stated that they are friends and they were talking near the Kurichi Silver Jubilee, which is situated at Pollachi Main Road. They have further stated that they saw the deceased crossing the road from south to north and at that point of time, the vehicle which was driven by the petitioner from north to south turned and dashed against the deceased. PW1 to PW3 have consistently given this eye



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witness account. There are some minor discrepancies with regard to where PW1 to PW3 were standing at the time of the incident. The incident had taken place in the year 2010 and PW1 to PW3 came before the Court to give evidence in the year 2013. Hence, by passage of time, it is possible that they will not be able to give the exact details and there will be some discrepancies in their evidence and the Court is expected to see if such discrepancy in the evidence given by PW1 to PW3 really goes to the root of the matter. Both the Courts below have appreciated the evidence of PW1 to PW3 and have come to the conclusion that the vehicle came from North to south and had turned with the same speed towards east and the deceased who was crossing the road from south to north was hit by the vehicle. It is true that the rough sketch gives an indication that the deceased was hit almost near the place where the vehicle was turning.



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17. While exercising the revisional jurisdiction, this Court must kept in mind that this is not a second appeal filed before the Court and there is no scope for re-appreciation of evidence. The revisional jurisdiction must confine itself to see if the findings of the Courts below suffers from perversity. Hence, the evidence being capable of a different interpretation can never be a ground to interfere while exercising revisional jurisdiction. As such, this Court does not find any perversity in the findings of both the Courts below based on the appreciation of evidence of PW1 to PW3.

18. The evidence of the Postmortem doctor read with the postmortem report shows that the deceased had died due to head injuries sustained by him in the accident. It is also clear from the report of the Motor Vehicle Inspector that there were no mechanical defects that is attributable to the vehicle that was driven by the petitioner. This evidence also lends strength to the



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eye witness account of PW1 to PW3.

19. In the light of the above discussion, this Court does not find any ground to interfere with the findings of both the Courts below insofar as the conviction of the petitioner under section 279 and 304A of IPC.

20. Insofar as the sentence is concerned, it has been brought to the notice of this Court that the petitioner had already suffered incarceration for nearly 77 days. That apart, the parents of the deceased had filed claim petition before the Motor Accident Claims Tribunal and compensation was awarded. The police officer who was present before this Court, on enquiry, informed this Court that the parents of the deceased received the compensation of a sum of Rs.5,92,140/-. The petitioner has also deposited the fine



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amount and the same is evident from the order passed by this Court on 13.10.2017, when the petitioner was released on bail.

21. Taking into consideration the facts and circumstances of the case and also of the fact that the petitioner is now working as a Auto Driver and is eking his livelihood from the income he earns by driving the auto and also of the fact that the petitioner has already undergone incarceration for 77 days, this Court is inclined to modify the sentence. The sentence of imprisonment is confined to the period already undergone by the petitioner and the fine imposed by the Court below to the tune of Rs.1,500/- is confirmed and this fine amount has already been paid by the petitioner.

22. In the result, this Criminal Revision case is partly allowed to the extent indicated herein above. The bail bond



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executed by the petitioner shall stands cancelled. Before drawing the curtain, this Court appreciates Ms.S.Sridevi, legal aid counsel who assisted this Court and made effective submissions on behalf of the petitioner. This Court directs the Secretary, Legal Aid Service, Madras High Court to pay a sum of Rs.10,000/- to Ms.S.Sridevi, towards appearance on behalf of the petitioner in this case.

06.04.2023

Internet : Yes
Index : Yes
Speaking Order / Non Speaking Order

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N. ANAND VENKATESH, J.

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To

1. The V Additional District & Sessions Judge,
Coimbatore.
2. The Judicial Magistrate No.VIII, Coimbatore

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